

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ALIZABETH V HENRIKSEN
Claimant

HY-VEE INC
Employer

APPEAL 17R-UI-05164-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/22/17
Claimant: Respondent (4)**

Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default
Iowa Code Ch. 17A – Iowa Administrative Procedure Act
Iowa Code Ch. 96 – Iowa Employment Security Act
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed an appeal from the February 13, 2017 (reference 01) decision that allowed the claimant benefits. A hearing was scheduled and conducted on March 15, 2017, and the employer participated. A hearing decision was rendered (See appeal number: 17A-UI-01977-TNT). The claimant did not participate and requested the hearing be reopened.

After the Employment Appeal Board (EAB) remanded, due notice was issued, and a hearing was scheduled to be held at 10:00 a.m. on June 2, 2017. In this case, the claimant registered a phone number with the Appeals Bureau prior to the hearing. A review of the Appeals Bureau's conference call system after 10:15 a.m. the same day shows the claimant failed to be available when called for the hearing at the number she registered. No request for postponement or accommodation was made by the claimant prior to the hearing. A voicemail was provided to the claimant, directing her to call the Appeals Bureau immediately, if she wished to participate. A grace period was extended to allow her to respond before the record was closed. No hearing was conducted.

Because the EAB did not vacate the original appeal decision number 17A-UI-01977-TNT, that hearing record is adopted and incorporated herein.

ISSUE:

Should the original appeal hearing decision be adopted?

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The hearing for June 2, 2017 was scheduled based on the claimant's request to reopen the record after she failed to participate in the March 15, 2017 hearing. The claimant, Alizabeth V. Henriksen, failed

to be available when called for the hearing, nor did she request a postponement of the hearing as required by the hearing notice.

The administrative law judge's decision (Appeal Number: 17A-UI-01977-TNT) concluded that the claimant was disqualified for unemployment insurance benefits and had been overpaid benefits. The employer was relieved of charges.

Having reviewed all of the evidence in the record, the administrative law judge finds: Inasmuch as the decision was not vacated as a result of the Employment Appeal Board remand, the administrative law judge's findings of fact in appeal number 17A-UI-01977-TNT is hereby adopted and incorporated herein as the findings of fact for appeal number 17R-UI-05164-JC-T.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedure Act at Iowa Code § 17A.12(3) provides that if a party fails to appear or participate in a hearing after proper service of notice, the judge may enter a default decision or proceed with the hearing and make a decision in the absence of the party. The statute further states that if a party makes a timely request to vacate the decision and shows good cause for failing to appear, the judge shall vacate the decision and conduct another hearing. The claimant, Alizabeth V. Henriksen appealed administrative law judge's decision but failed to be available to participate in the second scheduled hearing.

For the reasons that follow, the administrative law judge concludes that inasmuch as the decision was not vacated as a result of the Employment Appeal Board remand, the administrative law judge's reasoning and conclusions of law in appeal number 17A-UI-01977-TNT is hereby adopted and incorporated herein as the findings of fact for appeal number 17-R-UI-05164-JC-T.

DECISION:

The February 13, 2017 (reference 01) decision is modified in favor of the employer/appellant. Inasmuch as the decision was not vacated as a result of the Employment Appeal Board remand, the administrative law judge's decision in appeal number 17A-UI-01977-TNT is hereby adopted and incorporated herein as the findings of fact for appeal number 17R-05164-JC-T.

The administrative law judge's decision for appeal number 17A-UI-01977-TNT denying benefits remains in effect. Because the claimant was discharged for disqualifying misconduct, benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefits amount, provided she is otherwise eligible. The claimant has been overpaid unemployment insurance benefits in the amount of \$822.00, and is obligated to repay the agency those benefits. The employer did participate in the fact-finding interview and its account shall not be charged.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn